

## GENERAL DURABLE POWER OF ATTORNEY

I, \_\_\_\_\_, of \_\_\_\_\_,  
(Name of Principal) (Street Address)  
of \_\_\_\_\_; \_\_\_\_\_,  
(City) (State)  
\_\_\_\_\_, make this General Durable Power of Attorney appointing  
(Zip Code)  
\_\_\_\_\_, of \_\_\_\_\_,  
(Name of Agent) (Street Address)  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_  
(City) (State) (Zip Code)

my true and lawful attorney-in-fact hereinafter sometimes referred to as my Agent.

I authorize my Agent to:

### **MONEY, BANK ACCOUNTS AND SECURITIES**

Demand, sue for, receive, collect and hold any and all moneys, securities and other property of any nature that now belong to me or may belong to me in the future or in which I may have an interest and generally deal with any such property;

Sign, endorse or assign any note, check or other instrument of any nature, negotiable or non-negotiable, for deposit, discount, collection or otherwise;

Open accounts of any nature in my name or in the name of my Agent and transfer my money or other property to any such account;

Write checks upon or otherwise withdraw all funds or account balances now or hereafter outstanding to my credit or the credit of my Agent, whether or not the check or other instrument is drawn to the order of my Agent;

Prepared by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name, address and telephone # of party  
that prepared this document.)

\_\_\_\_\_  
Initials

Vote in person or by proxy, sell or otherwise dispose of, cause to be registered in the name of a nominee selected by my Agent and transfer, redeem, convert or exchange any security that now belongs to me or may belong to me in the future or in which I may have an interest and make, execute and deliver any endorsement, assignment, certification or other document in connection with any security;

### **BUYING, SELLING AND DEALING WITH REAL AND PERSONAL PROPERTY**

Buy, acquire or invest in property, real or personal, tangible or intangible, including but not limited to any security, option or other type of investment of whatever kind and nature;

Sell, convey or lease any lands, buildings or other improvements or appurtenances to lands belonging to me now or in the future or in which I may have an interest and execute and cause to be recorded any and all deeds or other writings that may be necessary with respect to transactions involving such property;

Make sign, acknowledge and deliver any contract, deed, lease, or other document relating to real estate or personal property or both, and perform any contract binding either me or my Agent;

Have access to any safe deposit box registered in my name and remove or add to the contents;

Instruct any entity or person having custody or control of any assets of mine, or any assets in which I may have an interest, in any agency, fiduciary, or other capacity and I authorize that person or entity to rely upon such instructions;

### **PAYING AND COLLECTING CLAIMS, BORROWING AND LENDING**

Pay all sums of money that may now or in the future be owing by me, whether the obligation is incurred by me or by my Agent, compromise or submit to arbitration any claim, whether it is against me or in my favor, and receive or give releases in connection with claims against me or in my favor

Borrow or lend money or property, with or without security, interest or fees and deliver or receive any documents that may be necessary or proper for such purposes;

## **MEDICAL DECISIONS AND HEALTH CARE**

To make all health care decisions of any nature whatsoever on my behalf.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not authorize a course of treatment which my agent knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what treatment choice I would have made on my own behalf, then my agent shall make a choice for me based upon what my agent believes to be in my best interests.

The powers of my agent shall include the following:

- A. To consent to or refuse or withdraw consent to any type of medical care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or inadvertently hastens my death;
- B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;
- C. To employ and discharge my health care providers;
- D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, adult home or other medical care facility for services other than those for treatment of mental illness requiring admission procedures provided in Article 1 (§37.1-63 et. seq.) of Chapter 2 of Title 37.1; and
- E. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers.

Further, my agent shall not be liable for the costs of treatment pursuant to his authorization, based solely on that authorization.

## **APPOINTMENTS, TAXES, TRUSTS, GIFTS, AGREEMENTS, ASSIGNMENTS AND DISCLAIMERS**

Appoint any individual or corporation as substitute attorney-in-fact or agent under this power of attorney with any or all of the powers and authority granted my Agent.

Sign, make, execute and file in my name and on my behalf with any taxing authority, such tax returns, forms, elections and reports as may be required or authorized by law, and handle all tax matters on my behalf

Transfer and convey to or withdraw from the trustee of any revocable trusts created by me any of my real and personal property, as my Agent considers appropriate;

Make gifts on my behalf to any of my children and more remote descendants and the spouse of any child or more remote descendant of mine (provided that the aggregate value of all gifts to any one of them in any one calendar year shall not exceed in value the amount that can pass free of federal gift tax under sections 2503(b) and 2503(e) or any subsequent provisions of the Internal Revenue Code, as amended):

Make gifts on my behalf to any charitable organization and pay my charitable pledges and dues and those charitable pledges and dues for which my spouse and I are jointly liable, without contribution from my spouse;

Select the method and time of payments from and the beneficiaries of any insurance policies and any pension, profit sharing, stock ownership or other retirement plans; elect to participate in and make investment selections and give investment directions under such plans; waive the benefit of any survivorship or annuity rights under such plans that I may have as the spouse of a covered employee; surrender insurance policies; amend or terminate individual retirement accounts or other retirement or deferred income arrangements; and make selections of optional benefits offered by my employer and exercise continuation rights as to any benefits;

Disclaim the succession to any property, real or personal, or interest therein, to the extent allowed under applicable law; and

## **GENERAL**

Without limiting the above powers, generally perform any other acts of any nature that ought to be done or in the opinion of my Agent ought to be done, in any circumstances as fully and effectively as I could do if acting personally. The

granting of authority to my Agent under this instrument shall not be deemed to create a duty to act in any particular instance if my Agent in my Agent's discretion undertakes to act.

### **NOTICE OF REVOCATION**

Any person, firm, or corporation shall be fully protected in relying upon this power of attorney unless and until actual notice of its revocation or actual notice of the death of the undersigned is received.

### **RATIFICATION OF AGENT'S ACTIONS**

I hereby ratify and confirm all actions, which may be taken by my Agent under this power of attorney.

### **DURABLE POWER OF ATTORNEY**

This power of attorney shall not terminate upon my disability.

### **MULTIPLE ORIGINALS**

This power of attorney is executed in more than one counterpart, any one of which shall, for all purposes, be deemed an original.

WITNESS my signature and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
(Year) (day) (Month)

\_\_\_\_\_ [SEAL]  
(Signature of Principal)

\_\_\_\_\_  
(Printed or Typed Name of Principal)

\_\_\_\_\_[SEAL]  
(Signature of Witness)

\_\_\_\_\_  
(Printed or Typed Name of Witness)

\_\_\_\_\_[SEAL]  
(Signature of Witness)

\_\_\_\_\_  
(Printed or Typed Name of Witness)

**COMMONWEALTH/STATE OF** \_\_\_\_\_

**CITY/COUNTY OF** \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared the Principal and the two witnesses identified above, known to me to be the Principal and the witnesses, respectively, whose names are signed to the foregoing instrument and, all of these persons being by me first duly sworn, the Principal declared to me and to the witnesses in my presence that said instrument is the Principal's General Durable Power of Attorney and that the Principal had willingly signed and executed it in the presence of said witnesses as the Principal's free and voluntary act for the purposes therein expressed; that said witnesses stated before me that the foregoing General Durable Power of Attorney was executed and acknowledged by the Principal as the Principal's General Durable Power of Attorney in the presence of said witnesses who, in the presence of and at the Principal's request, and in the presence of each other, did subscribe their names thereto as attesting witnesses on the day of the date of said General Durable Power of Attorney, and that the Principal, at the time of the execution of said General Durable Power of Attorney, was over the age of eighteen years and of sound and disposing mind and memory.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

My commission expires: \_\_\_\_\_

## **Virginia Code Provisions, Powers of Attorney**

Virginia Code §2-45.13 relating to the Virginia Uniform Prudent Investor Act.

Virginia Code §6.1-194.56 relating to powers of attorney and bank accounts.

Virginia Code §§11-9.1 to 11-9.6, Virginia's power of attorney statute.

Virginia Code §§11-9.6 and 37.1-132, relating to the application of the power of attorney disclosure rules.

Virginia Code §17.1-227 relating to the requirement that a power of attorney to convey real property is acknowledged.

Virginia Code §26-7.4 relating to the environmental liability of fiduciaries.

Virginia Code §26-40.01 relating to the securities in which fiduciaries may invest.

Virginia Code §26-45.1 relating to the standard of judgment and care required of fiduciaries and authorized investments.

Virginia Code §37.1-134 relating to whether a conservator should be appointed when there is a durable power of attorney.

Virginia Code §37.1-134.22 relating to the discovery of information and records regarding actions of agents.

Virginia Code §55-107 relating to where a power of attorney may be admitted to record.

Virginia Code §64.1-62.3 relating to nonademption of bequest or devises of specific property sold by an attorney in fact under the authority of a power of attorney

### **What is a power of attorney?**

A power of attorney is a written document that authorizes one person to act on behalf of another.

The person giving the power of attorney is the principal and the person who is authorized to act on behalf of the principal is the attorney-in-fact or agent.

The principal must be able to understand the nature and consequences of the power of attorney at the time he or she signs it in order for the power of attorney to be legally valid. This decision is made at the time you sign it, so it is still valid even if you later become incapacitated (if the power of attorney is "durable").



**What is a durable power of attorney?**

This means that the power of attorney will remain in effect if you later became mentally incapacitated.

Virginia law requires language indicating that you intend for the power of attorney to remain in effect upon your disability or the power of attorney would automatically terminate.

**What is a springing power of attorney?**

A power of attorney is effective as soon as you sign it unless it contains language stating that it will not go into effect until a specified time in the future (for example, if you become unable to handle your own affairs). A power of attorney with this language is called a springing power of attorney.

**What is a general power of attorney?**

The general power of attorney gives the agent broad power to do almost anything for you, the principal.

While the power of attorney may give the agent authority to make medical decisions, this authority is generally granted separately in an advanced medical directive or health care power of attorney.

An agent cannot make a Will for you.

**What is a limited power of attorney?**

A limited power of attorney gives the agent authority to do only certain specific things spelled out in the document.

**Why should I sign a power of attorney?**

A durable general power of attorney could be very useful to you if you ever become temporarily or permanently incapacitated and unable to handle some or all of your business and personal affairs. Your agent could step in and take care of your affairs for you without delay.

A power of attorney may avoid the need for a guardianship. If you become incapacitated and have not signed a power of attorney, someone may be forced to petition the Circuit Court to have a guardian and/or conservator appointed for you. A guardianship and/or conservatorship proceeding can be an expensive, unpleasant and slow process for you, your family, and your friends. It is expensive because you will have to pay lawyers, court fees, and other fees. It can be unpleasant because a hearing must be held in open court, and it can be slow because it takes time to get a court date for the hearing. After the hearing, the Court will decide who should be your guardian or conservator and it may not be someone you would want handling your affairs. In addition, your conservator may be

required to file certain documents with the court on an ongoing basis, which can be both time-consuming and expensive.

### **When does the power of attorney take effect?**

Your General Power of Attorney will take effect on the date you sign it unless it is a springing power of attorney. Your power of attorney remains in effect during your lifetime unless you revoke it.

A springing power of attorney may seem like a good way to prevent the agent from using the power of attorney before it is necessary, but it may lead to problems. The agent may have a hard time using the power of attorney because it may not be accepted unless the agent can prove that you are disabled every time he tries to use it. If you do not trust your agent to use the power of attorney only when it is necessary, you probably should name another person as your agent. If you want to use a springing power, you should consider including language about how your incapacity is to be determined, such as a letter from your physician that is to be attached to the power of attorney. Some attorneys will hold the power of attorney for you until a physician informs the attorney that you are no longer able to handle your own affairs.

The time to sign a general power of attorney is as soon as you decide that it's a good planning tool. You never know when something might happen to you that would cause you to be unable to handle your affairs. This is true regardless of your age.

It is often too late to sign a power of attorney once you need it because you may no longer have the mental ability to sign a valid power of attorney.

### **Will I still be able to handle my own affairs after signing a power of attorney?**

Yes. Signing a power of attorney does not mean you will lose the right to take care of your own affairs and make your own decisions.

As long as you are competent, the agent should act only when asked by you however, the agent may act legally at any time unless the general power of attorney is a springing power of attorney. You should tell the agent to use the power of attorney **only** if you become incapacitated.

Under Virginia law, the agent you name must act only in your best interests.

Your agent should keep records and papers showing what she has done for you. You have the right to ask the agent for these records.

### **Where do I get a power of attorney?**

A lawyer should write a general power of attorney for you because you want to be sure that the agent will be able to use it if it becomes necessary.

Banks and other institutions may not accept a power of attorney that has not been prepared by a lawyer because it may not have the exact wording that is necessary. A lawyer should know what language should be in the power of attorney to make it "durable" and to give the agent the authority he or she may need to handle your affairs.

If you had a power of attorney prepared while you were living in another state or country and you have now moved to Virginia, that document might be legal under Virginia law. You should have an attorney look at it for you or have a new one written.

Your local legal aid office may prepare one for you if you are eligible. Most private lawyers charge only a small fee for preparing a power of attorney, particularly if you also have a Will prepared.

### **Who should I appoint as my agent under the power of attorney?**

You may appoint any competent adult as your agent. It is important that you appoint someone you completely trust.

It is a good idea to name more than one agent in case your agent is unable to assist you when the time comes. You can name co-agents or a successor agent.

You can appoint an agent who lives outside Virginia, however it may be more convenient if your agent lives near you.

Again, be sure you completely trust your agent because you are giving that person powers that can be abused.

### **Can I later change or revoke the power of attorney?**

You can revoke or change the power of attorney if you are still mentally able to understand what you are doing.

If you are no longer able to understand what you are doing, a court could appoint a guardian or conservator and revoke the power of attorney if it is necessary.

### **Should I discuss the power of attorney with the person I name as the agent?**

Yes. Be sure your agent is willing to use the power of attorney to take care of your affairs if it becomes necessary.

Instruct your agent(s) not to use the power of attorney unless you ask him to use it or if you become unable to handle your own affairs.

You need to make sure your agent knows where your power of attorney is kept, so she will have access to it if you become incapacitated.

If you keep it in your safety deposit box, make sure that your agent will be able to get into the box if need be. You may want to let your agent keep it for you.

Tell your agent that if he uses your power of attorney and must sign a document on your behalf, he should sign as follows:

\_\_\_\_\_ (Your name) by \_\_\_\_\_ (Agent's name), agent for \_\_\_\_\_ (your name).

It will then be clear that he is signing on your behalf only and is not making himself liable for your debts.

The Virginia Department for the Aging thanks the Virginia Poverty Law Center for permission to use the material that it prepared for information about powers of attorney.

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